

REMARKS/ARGUMENTS

This case has been carefully reviewed and analyzed in view of the final Office Action dated 9 December 2009. Responsive to the final Office Action, Claims 37 and 45 have been amended to further clarify the combination of steps that define the invention of the subject Patent Application. Accordingly, Claims 37 and 40-47 remain pending for further prosecution.

In the Office Action, the Examiner rejected Claims 37 and 40-47 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Specifically, the Examiner stated that the Claims contained subject matter which is not described in the Specification in such a way as reasonably conveyed to one skilled in the relevant art that the invention, at the time that the Application was filed, had possession of the claimed invention. The Examiner stated that the subject matter which was not described in the original Specification includes the limitation that the assessment of cardiac function is “based upon the amplitude of the electrical signal at a sample defined by the R waves and the first particular offset time.”

It is respectfully submitted that the Examiner’s rejection is incorrect and the language is fully supported by the Specification as filed. Specifically, for the purposes of detecting algorithms, “different sub-segments, elements, and calculated values related to the beats 500 and 500’ are hereby specified. The peak of the R wave of the beat 500 occurs at the time T_R (509). The PQ segment 501

and ST segment 505 are sub-segments of the normal beat 500 and are located in time with respect to the time T_R (509). Fischell, page 34, lines 24-27 (Fischell Patent Application Publication U.S. 2004/0059238, page 12, column 2, para [0160]); see also, Fischell, page 35, lines 1-10 (Fischell Patent Application Publication, page 12, column 2, paras [0161] – [0165]). Very clearly, the cited language closely tracks the language claimed in the subject Patent Application. It is believed that the language cited by the Examiner is fully supported by the Specification as filed and it is believed that the Examiner's rejection under 35 U.S.C. § 112, first paragraph, has been obviated. Applicants further request that the rejection under 35 U.S.C. § 112, first paragraph, be withdrawn.

Finally, the Examiner rejected Claims 37 and 40-47 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Accordingly, Claims 37 and 45 have been amended to further clarify the subject matter being claimed. Accordingly, it is believed that Claims 37 and 45 have been amended to obviate the Examiner's formal concerns under 35 U.S.C. § 112, second paragraph. Applicants further request that the rejection under 35 U.S.C. § 112, second paragraph be withdrawn.

It is now believed that the subject Patent Application has been placed fully in condition for allowance, and such action is respectfully requested.

No fees are believed to be due with this Amendment. If there are any charges associated with this filing, the Director of Patents and Trademarks is hereby authorized to charge Deposit Account #18-2011 for such charges.

Respectfully submitted,
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this paper is being transmitted electronically to the U.S. Patent and Trademark office, Art Unit #3762 on the date shown below.

For: ROSENBERG, KLEIN & LEE

8 March 2010

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